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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 848

ERNEST GAILLARD, JR., and MIGNONNE NASH GAILLARD,
Petitioners,

VERSUS

FREDDIE MORGAN FIELD, Administratrix of the Estate of Fred Morgan, Deceased,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

This brief is in response to Plaintiffs' Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit, and requests this Court to deny the writ.

CITATIONS TO OPINIONS BELOW

The opinion of the United States District Court for the Western District of Oklahoma, delivered orally November 30, 1965 (R. pp. 122-124), printed in Appendix B of Plaintiffs' Petition for Writ of Certiorari, page v, is unreported as of the date of filing this brief. The opinion of the Court of Appeals (R. of Court of Appeals, p. 4) printed in Appendix B of Plaintiffs' Petition for Writ of Certiorari at page vii is unreported as of the date of filing this brief.

QUESTIONS PRESENTED

Does the full faith and credit clause of the United States Constitution set aside the long standing and well established law of comity?

Can a California citizen enforce a California statute which invokes a forfeiture in an Oklahoma court when there is no comparable Federal or Oklahoma statute, and where the California statute and its forfeiture clause are contrary to the public policy of Oklahoma.

STATEMENT OF THE CASE

In this case the Plaintiffs entered into various private transactions with Fred Morgan, who died pending the litigation. Certain of these transactions were profitable (Item 1, Appendix p. i) to the Plaintiffs, and certain ones were unprofitable. The Plaintiffs in their action wanted to retain all of the benefits of the profitable transactions but have all their money returned on the unprofitable ventures after they had had an opportunity for those ventures also to prove profitable.

Plaintiffs' plea was on the basis that the unprofitable ventures were subject to the technical forfeiture clause of the California Securities Statute. The Federal Securities Act does not regulate private transactions such as the ones between Plaintiffs and Defendant, and in Oklahoma the Securities Act expressly provides that oil and gas transactions are not securities. Also, in Oklahoma, according to the uncontroverted evidence in the case, regulations of oil and gas transactions similar to the ones here before the Court, are contrary to public policy. In this regard, the

Plaintiffs put on Paul Duncan, a prominent lawyer in Oklahoma, who had formerly been head of the Oklahoma Securities Commission. He testified that there was a public outcry in Oklahoma against the regulation of this type of oil and gas transaction as a security, and this testimony and evidence stands uncontradicted in the record. Mr. Duncan's testimony in this regard is set out herein under the heading "Argument and Authorities."

Mr. Morgan had become personally acquainted with the Plaintiffs while undergoing medical treatment in La Jolla, California. As the result of this personal acquaintance, the Plaintiffs entered into a series of transactions with Mr. Morgan.

The first was an interest acquired in the James lease in Lincoln County, Oklahoma. In addition, Mr. Morgan was instrumental through a son-in-law and employee in the Plaintiffs acquiring the Tiffin and Lingerfelt leases in Pottawatomie County, Oklahoma, which leases were also profitable. In this regard, see the opinion of the trial court which appears at page v to the Appendix of Plaintiffs' Brief, where the court refers to this fact. The James lease resulted in oil sales totalling $151,085 in return for cost of $71,500 as of the time of trial, and the property was still producing. (See Item 1 Appendix hereto, p. i.)

With regard to these transactions, the Plaintiffs desired to keep all of their profits and all of the benefits thereof, but in addition to such transaction the Plaintiffs engaged in numerous transactions with the Defendant wherein wildcat and semi-wildcat wells were drilled. These transactions were negotiated by numerous telephone and mail com-

munications between Mr. Morgan in Oklahoma and the Plaintiffs in California, by some personal contacts on the part of Mr. Morgan in California, and also the plaintiff, Dr. Ernest Gaillard, made four trips to Oklahoma (R. 88, see page 5 hereof). The culmination of each of such transactions was embodied in a simple one-page letter agreement prepared by Mr. Morgan in Oklahoma, sent through the mail to Dr. Gaillard in California, who would accept the letter agreement and send it back.

The first of the letter agreements, which is typical of the group, is set out in the Appendix hereto as Item 2, at pages ii-iii. As will be seen from a cursory reading of the letter agreement, it is a simple contract providing for the drilling of the No. 1 Throckmorton well in Kingfisher County, Oklahoma, and in it Mr. Morgan agrees on a turn-key basis to drill the well and assign the Plaintiffs a 1/8th interest in the lease. The Plaintiffs took the position in the court below that this was a security because it calls for an assignment of the lease to be made to the Plaintiffs. The trial court ruled that this contract should be interpreted under the Oklahoma law, not under the California law, and that, therefore, the California Securities Law did not apply (See the opinion of the trial court reported at page v, in Appendix B to Plaintiffs' Petition for Writ of Certiorari). The well called for in this lease was, of course, a wildcat from which tremendous profits might have been made. Various of the other letter agreements called for similar wells, some of which produced some oil, but were not profitable.

The position of the Defendant (the Administratrix of the Estate of Fred Morgan) in the trial court was that these

agreements were to be performed in Oklahoma and outside of the State of California, and that, therefore, they should be interpreted in accord with their place of performance, and further that even if they were California Securities that, as a matter of comity, the Plaintiffs could not come into the Oklahoma court and assert a local foreign law which had no counterpart in a Federal Statute, or in the Oklahoma statutory law or substantive law, and which was contrary to the public policy of Oklahoma. As will be seen from the trial court's opinion as it appeared in the Appendix B to the Plaintiffs' Petition for Writ of Certiorari, *supra,* the trial court held for the Defendant on all of these counts.

The Plaintiffs contend in their Petition for Writ of Certiorari that sales of securities were "actually made in California" (page 10) but the trial court did not so find and the facts do not accord to this interpretation. The facts in this regard are contained in a simple trial stipulation (R. 87-88) which was to the following effect:

> "The Court: Yes. We will take a recess and if counsel desire to talk to me I will be in chambers.
>
> "(Hereupon a recess was called, after which court convened, all appearance as heretofore, and further proceedings had as follows, the last preceding witness resuming the stand.)
>
> "Mr. Verity: For the record and in order to simplify this litigation, the defendant will enter into a stipulation that Fred Morgan made numerous trips to California from 1959 to 1963, and that on all these occasions Fred Morgan and this plaintiff discussed the business that is the subject of this litigation, or parts of it. I believe also, that part of the stipulation is they also on

numerous occasions, on many, many, occasions discussed part of these deals over the telephone. That Fred Morgan sent volumes of mail to the plaintiff and a little correspondence, a small amount, was sent back by the plaintiff to Fred Morgan. Also, that the plaintiff was in Oklahoma on four occasions. I think counsel wants to introduce some testimony on that. We further stipulate that they met in Phoenix, Arizona at one time and discussed parts of this matter. Does that cover it?

"Mr. Irvine: I think so."

It would be more correct to say the transactions were interstate, interstate telephone calls, interstate mail, and most particularly the complained of contracts were prepared in Oklahoma, mailed to the Plaintiffs in California, there signed and mailed back to the Defendant in Oklahoma. The trial court determined that Oklahoma being the place of performance, the Oklahoma law should be applied (Appendix B to Plaintiffs' Petition for Writ of Certiorari, p. vii).

SUMMARY OF ARGUMENT

In its argument contained under the heading "Argument and Authorities," the Defendant will show to the Court that the Plaintiffs' application for a writ of certiorari should be denied, for the reason that the full faith and credit clause of the Constitution does not set aside the law of comity; that in this case where there was no violation of Federal Statutes that a transaction that principally took place in interstate commerce cannot be forfeited to the advantage of the Plaintiffs under the technicalities of a local California Statute which is contrary to the uncontradicted public policy of Oklahoma; that the 1948 amendment

to Section 1738 of 28 U.S.C.A., did not change the law of comity, and that there is no conflict between the opinion of the Circuit Court of Appeals and the Oklahoma case of *Holder* v. *Holder;* that the Plaintiffs were not entitled to recover as a matter of equity or as a matter of law, and that Plaintiffs' Petition for a Writ of Certiorari should be denied.

ARGUMENT AND AUTHORITIES

Proposition No. I

The full faith and credit clause of the Constitution does not set aside the law of comity which denies Plaintiffs the right to enforce the local California Securities Statute in this case where the following conditions prevail:

A. Where there is no comparable substantive or statute law.

B. Where such California local law is contrary to public policy or would work an unjust hardship upon a citizen of the Oklahoma jurisdiction.

The law of comity which has arisen under the full faith and credit clause of the United States Constitution has some very definite limitations in that the law of comity whereby a court will enforce the laws of a foreign country or state will not be extended if there is no comparable local law or statute or where the foreign local law to be enforced would be contrary to the public policy of the jurisdiction where its enforcement is sought; or where it would work an unjust hardship upon one of the citizens of the jurisdiction where the enforcement is sought. In addition thereto, the rule of comity between courts will not be enforced against a citizen of the jurisdiction where the enforcement is sought if the local foreign law is penal in nature.

If either A or B out of the above proposition obtain, then the plaintiffs are not entitled to recover against Fred Morgan in the courts of Oklahoma, the place of his residence. The Oklahoma court very early addressed itself to this point in the case of *Klein* v. *Keller*, 42 Okla. 592, 141 Pac. 1117. We quote from the syllabus propounded by the Court in that case:

> "1. CONTRACTS (§ 101*)—Validity—What Law Governs
> "The question whether a contract is legal or illegal is judged by the law on the subject in the state or country in which the contract is made; the general rule being that 'a contract good where made is good everywhere, and a contract invalid where made is invalid everywhere.' The exceptions to the general rule are: '(1) Where the contract in question is contrary to good morals; (2) where the state of the forum or its citizens would be injured through the enforcement by its courts of the contracts of the kind in question; (3) where the contract violates the positive legislation of the state of the forum, that is, is contrary to its Constitution or statutes; (4) where the contract violates the public policy of the state of the forum.'
>
> "(Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 455-460; Dec. Dig. § 101*)"

There is a legion of authority to the effect that comity is withheld under the circumstances of A and B. See *London Terrace* v. *McAllister*, Tex. Civ. App., 179 S.W.2d 515; *Thorn* v. *Machen*, 58 Cal.App.2d 76, 136 P.2d 116; *In re Shun T. Takahoshi's Estate*, 113 Mont. 490, 129 Pac. 217; *Jackson* v. *Shuttleworth*, 42 Ill.App.2d 257, 192 N.E.2d 217; *Klaxon* v. *Stentor Electric Manufacturing Company*, 313 U.S. 487, 85 L.Ed. 1477, 61 S.Ct. 1020; *Griffin* v. *McCoach*, 313 U.S. 498, 85 L.Ed. 1481, 61 S.Ct. 1023, 134 A.L.R. 1462.

We submit that in the case at bar each of these limitations does obtain. Certainly, there is no statute or substantive law in Oklahoma which would hold that, if an oil and gas transaction similar to the one complained of here by the plaintiffs is entered into, that it is void, or that one party could retrieve their money, merely because the leases assigned after the drilling and development of the properties were not registered with a Securities Commission and a license issued for a sale thereof. As provided in 71 O.S.A. § 2(1) as quoted in Appendix A of petitioners' brief at pp. iii and iv, such transactions are specifically exempted from Securities Regulation in Oklahoma, and therefore there not only is no comparable statute or substantive law in Oklahoma, but the law in Oklahoma is expressly contrary by statute to the California law. Certainly, there never was any common substantive law with regard to registration of securities, and the Oklahoma law and statute with regard to securities registration in no way has been infringed, nor do the Plaintiffs contend that it has been infringed.

The trial court made a finding (No. 10, R. 75) that it was contrary to the public policy of the State of Oklahoma (See Item 3, p. iv, Appendix hereto) to regulate oil and gas transactions. During the trial the Defendant offered evidence to this effect which was not objected to or countered by the Plaintiffs.

The Defendant offered the testimony of Paul Duncan, a prominent Oklahoma attorney, who was particularly qualified to express opinion upon the question of the public policy of Oklahoma with regard to securities matters because he had been appointed Trustee in Bankruptcy of the

Selected Investment matter, thereafter had a hand in the adoption of the present Oklahoma Securities Law and was the first Chairman of the Securities Commission constituted by such law. Also, as his testimony will show, he was Chairman of the Securities Commission at the time that an amendment was made in the law so as to provide that oil and gas transactions be excluded as "securities."

We quote from Mr. Duncan's testimony (R. 117) as follows:

"Q. Did this leave the Securities Commission any *problems* in regard to transactions in oil and gas industries in so far as the Securities Commission went? A. Yes. There were a number of things in the Act that were not quite like we would like to have had it, but the most head-aches we got in the securities business anywhere was the fact they had exempted oil and gas transactions but they had not excluded them, and for that reason the Act was interpreted by us in such a way to make it look like brokers and dealers would have to register under the Act.

"Q. *Was there any public outcry in regard to this?* A. *Very definitely. When that interpretation was given to it there was a great deal of it.*

"Q. As a result of this did the Oklahoma Securities Commission, through yourself as chairman or through its executive director make any request to the '61 legislature? A. Yes. Hugh Owens was the first *administer* appointed by the Commission and shortly after the Commission was formed we came to the conclusion this provision could not be enforced and should not be enforced and we therefore went to the legislative committee, as we knew that would be the one that would be interested in any changes in this Act and asked that they exclude oil and gas transactions and

actually gave the method by which we thought it could be done best, and then both Mr. Owens and myself appeared before the legislative committee and urged this amendment to the Act.

"Q. *Did other people join in that?* A. *Mr. Willis Baker's committee was interested in that also.*

"Q. Are you aware of whether they had made any recommendation immediately with regard to oil and gas transactions? A. Who actually made the recommendation I didn't know, although it was my understanding they had made such a recommendation.

"Q. Had the legislative council over a period of time, and actually prior to this being brought to public attention by the Selected Investments matter, had they actually been studying a revision of the Securities Act? A. Oh, yes.

"Q. Did they study it for four or five years prior to the recommendation of the 1959 law? A. I know at least in '57 they were working on it. I don't know before that date.

"Q. From your experience as an attorney and your relationship with the Oklahoma securities law, and public situation in Oklahoma, do you have an opinion with regard to whether or not there is a public policy in this state as to whether or not oil and gas transactions should be regulated as to securities? A. I have an opinion.

"Q. What is your opinion? A. They should not be regulated.

"Q. That is all." (Emphasis supplied.)

It actually had been the intent of the Legislature in adopting the initial law to exempt oil and gas transactions, which they did, but this left all developers and independent

operators under the regulation as "broker-dealers" dealing in securities for the reason that the initial enactment of the law did not *exclude* the transactions from being defined as a security. The amendment which the "public outcry" demanded, as well as the study that Mr. Duncan's Commission and Mr. Willis Baker's Committee (R. 117) had given to the matter very definitely established the fact that such transaction and any type of securities regulations with regard to them would violate "some deep rooted tradition of the common weal." This quoted standard of a definition for a public policy taken from page 10 of the Petition for Writ is taken from the case of *Loucks* v. *Standard Oil Company*, 224 N.Y. 99, 120 N.E. 198, and is a definition and standard with which we believe this testimony very positively shows conformance. To permit such transactions to be regulated in the manner that the California statute endeavors to do would put the Oklahoma oil industry in the greatest state of confusion. It would permit the second part of case B above and individuals like Dr. Gaillard and his wife to have the opportunity to participate in the drilling of wildcat wells and keep their participation if the wildcat proved productive, but to obtain their money back if it proved a dry hole. To Oklahoma, this is contrary to "fundamental principles of justice," it is contrary to Oklahoma's "prevalent conception of good morals." It is contrary to "deep-rooted tradition of the common weal" in Oklahoma, and it would work "an unjust hardship upon a" citizen of Oklahoma.

The law of comity is not set aside by the full faith and credit clause of the Constitution. This clause of the Constitution does not mean that in every instance where a plain-

tiff has a cause of action arising under a foreign local law that he is entitled to obtain relief against a citizen of the state of the forum.

The fact that the law of comity withholds relief on foreign local law, in the instances set out in parts A and B of this proposition, has long been an integral part of the law of comity in the United States. In the case of *Galveston, Harrisburg & San Antonio Ry. Co.* v. *Wallace,* 223 U.S. 481, 56 L.Ed. 516, 32 S.Ct. 205, our Supreme Court set out the fact that public policy of the local forum obviated recovery on a foreign law, with the following language:

> "The real question, therefore, presented by this assignment of error, is whether a state court may enforce a right of action arising under an Act of Congress.
>
> "Statutes have no extraterritorial operation, and the courts of one government cannot enforce the penal laws of another. At one time there was some question both as to the duty and power to try civil cases arising solely under statutes of another state, but it is now recognized that the jurisdiction of the state courts extends to the hearing and determination of any civil and transitory cause of action created by a foreign statute, provided *it is not of a character opposed to the public policy of the state in which the suit is brought.*" (Emphasis ours.)

Again, the Supreme Court upheld that withholding judgment in a court on an action based on foreign law was not contrary to full faith and credit. In the case of *George A. Fowler* v. *S. Warren Lamson,* 164 U.S. 252, 41 L.Ed. 424, 17 S.Ct. 112. In this case, the Court addressed itself to the particular problem and refused to overrule the Illinois Supreme Court when it had refused to enforce a Kansas statute in its state. We quote from such opinion as follows:

> "The point actually decided by the Supreme Court of Illinois was, as shown by that opinion, that the Constitution and statutes of Kansas in relation to the liability of stockholders in an insolvent corporation, provide a special remedy for enforcing that liability, and that such remedy could only be pursued, *and that the courts of Illinois would not enforce a statutory liability under a Kansas statute providing for a special remedy against the stockholders.*" (Emphasis ours.)

It can be readily seen that this case is exactly comparable to the one here before the Court where the Plaintiffs would enforce the special rescission provision of the California statute.

We would also point out to the Court that the case of *Hughes* v. *Fetter,* 341 U.S. 609, 95 L.Ed. 1212, 71 S.Ct. 980, cited by the Petitioners is not ruling in the case here at bar and does not set aside the above cited cases for the reason that in *Hughes* v. *Fetter* the Wisconsin court had endeavored to determine that a Wisconsin statute provided for death claims arising within the State of Wisconsin but declared a public policy against allowing suits within the state on death claims from accidents arising under foreign statute. This does not say that Wisconsin if it sought to do so could not determine that there would be no actions either arising within or without the state on death claims. This Court held in the *Hughes* v. *Fetter* case that Wisconsin could not declare that they had a public policy that Wisconsin *death claims were proper but not Illinois death claims.* This is obviously not the situation here before the Court where Oklahoma has expressly provided that oil and gas transactions shall not be regulated as securities.

The Petitioners also endeavor to extend this case to the situation here before the Court on the contention that Oklahoma does not have a public policy against regulation of securities transactions, and that, therefore, it cannot have a public policy against including oil and gas transactions in the Securities Law. We submit that the distinction is imagined, and that Oklahoma is not precluded from its public policy with regard to non-regulation of oil and gas transactions as securities merely because it acknowledges that stocks and normal securities should be regulated by proper law. Oklahoma has the right to declare its public policy, and deepseated requirements of the Oklahoma public, and its extensive vested interest in the oil and gas industry in saying that these transactions and nothing with regard to them shall be considered a security. If they had endeavored to provide that they would be regulated in Oklahoma, but that foreign law could not be applied against Oklahoma oil operators, then it would be analogous to *Hughes* v. *Fetter.*

The amendment of the full faith and credit statute of the Federal Government cited in the Petition for Writ (p. 12) has not resulted in waiving aside the comity rules and placing foreign statutes over local statutes and in the same position of an adjudicated matter from a foreign jurisdiction. This is made manifestly clear in the case of *Virgil G. Carroll, et al.* v. *M. Lonza, d/b/a Lake Charles Electric Company,* 249 U.S. 408, 99 L.Ed. 1183, 75 S.Ct. 804. Here, after the enactment of the amendment, the Court again held that one state was not necessarily bound by a conflicting act in another state. In this case, a suit was brought in the Arkansas courts by a workman employed in Missouri under

the Missouri Workman's Compensation Act. Such act did not allow a public liability claim against a third party, and it was asserted as a bar to the action by the workman employed under the Missouri contract. In this case, this Court clearly showed that the 1948 amendment to 28 U.S.C. Section 1738, did not eliminate the restraints upon comity with the following language:

> "The court of appeals thought Magnolia Petroleum Company v. Hunt * * *, to be controlling. There, the employee having received a *final award* for compensation in the forum of the injury returned to his home state and sued to recover under its compensation act. We held that the latter suit was precluded by the full faith and credit clause. But here there was no final award under the Missouri Act. Under that act, the statutory payments apparently started automatically on receipt of notice of injury (Missouri statutes cited). While provision is made for an adjudication of disputes between an employee and his employer, no adjudication was sought or obtained here."

This Court continued later in the opinion with language that is definitely applicable to the question here at bar, as follows:

> "The court proceeded on the premise, repeated over and again in the cases, *that the full faith and credit clause does not require a state to substitute for its own statute, applicable to persons and events within it, the statute of another state reflecting a conflicting and opposed policy.* Id., 306 U.S. 502, 59 S.Ct. 633.
>
> "* * * The state of the forum also has interests to serve and to protect." (Emphasis supplied.)

The Court then pointed out that the case of *Hughes* v. *Fetter, supra,* was not applicable to the situation with the following language:

> "This is not a case like *Hughes* v. *Fetter,* 341 U.S. 609, 71 S. Ct. 980, 95 L.Ed. 1212, where the State of the forum seeks to exclude from its courts actions arising under a foreign statute. In that case, we held that Wisconsin could not refuse to entertain a wrongful death action under an Illinois statute for an injury occurring in Illinois, since we found no sufficient policy considerations to warrant such refusal. And see Broderick v. Rosner, 294 U.S. 629, 55 S. Ct. 589, 79 L. Ed. 1100. The present case is a much weaker one for application of the Full Faith and Credit Clause. Arkansas, the State of the forum, is not adopting any policy of hostility to the public Acts of Missouri. It is choosing to apply its own rule of law to give affirmative relief for an action arising within its borders."

The Court had a very similar case to the one here at bar in the case of *Hoopeston Tanning Company* v. *Cullen,* 318 U.S. 313, 87 L.Ed. 777, 63 S.Ct. 602, when the case was appealed from the Supreme Court of the State of New York. In this case the Hoopeston Tanning Company was arguing that the State of New York under its law and public policy could not regulate insurance on property within its state when the appellants were reciprocal insurance associations, whose attorneys in fact were located in Illinois and had a contract of insurance that was *completed* in Illinois. The Court very energetically held that New York did not have to apply Illinois law, but that its interest in its people and property could "be measured by highly realistic considerations such as the protection of the citizen insured or the protection of the state from the incidents of loss."

The Court then observed that the contract between the parties important as it was is *"ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction."* This is exactly applicable to our situation here before the Court. And the following language of the Court in that case could be applied *in toto*:

> "The intimacy of the relation of these insurance contracts to the state of New York becomes even more apparent when it is remembered that the property insured is in the state of New York. The states have long held great authority over property within their borders. A state may make flood control, quarantine, conservation and zoning regulations affecting property within its bounds. It is the source of law for the forms of conveyances, for the nature of covenants, future interests and easements, for the construction of wills, trusts, and mortgages, and for many other legal principles affecting property interests. *Contracts formally made in other states may remain subject to the law of the state of the situs of the property, particularly in respect to immovables.* There is no more reason to bar the state from authority over the insurance of the property within it than to exclude it from conrol of all the other property interests mentioned.
>
> * * * * * *
>
> "The Allgeyer and subsequent insurance cases have been recently considered in Griffin v. McCoash, supra, * * * as the analysis in those opinions clearly indicates, the Allgeyer line of decisions cannot be permitted to control cases such as this, *where the public policy of the state is clear*, the insured interest is located in the state, and there are many points of contact between the insurer and the property in the state." (Emphasis supplied.)

In the article "Full Faith and Credit to Statutes: The Defense of Public Policy" in 19 University of Chicago Law Review at page 342 *Hughes* v. *Fetter, supra,* is explained. The article points out "Due process no longer forbids a state from applying its own law unless it has no reasonable contact with the transaction, and, where such a reasonable contact exists, Full Faith and Credit does not compel a state to apply another's law in preference to its own. In other words, further experience with the subject has induced the court to withdraw almost entirely from the field of choice of law." Citing *Hoopeston Tanning Company* v. *Cullen, supra*; *Home Insurance Company* v. *Dick,* 281 U.S. 397, 74 L.Ed. 926, 50 S.Ct. 338; *Pacific Employers Insurance Company* v. *Comm'n,* 306 U.S. 493, 74 L.Ed. 926, 59 S.Ct. 629.

Petitioners cite *Holder* v. *Holder,* Okla., 384 P.2d 663, but this case is not in point and there is no conflict between such case and the opinion of the 10th Circuit Court. In such case the plaintiff urged the Oklahoma Court to allow her to sue her husband on an accident that occurred in Missouri. The plaintiff argued that, even though the Missouri law did not permit suit by wife against husband, that it should be engrained into the action by the Oklahoma court as a matter of public policy because wives may sue husbands in Oklahoma. This is not analogous to the case at bar, of course, because the mere fact that Oklahoma permits wife to sue husband does not give rise to a Missouri cause of action.

CONCLUSION

We submit that it is only by a strained interpretation that the Plaintiffs can contend that sale of a security took

place in California. We point out that no fraud is involved in this cause, and that the Circuit Court of Appeals found there was ample evidence that there was no fraud. (See text of such opinion, page viii, to Appendix B of Plaintiffs' Petition for Writ of Certiorari); that there was no violation of the Federal Securities Act, because the transaction was a private transaction and no public offering was being made by the Defendant, and that the Plaintiffs did not contend that there was any violation of the Federal Securities Act; that, under all of these circumstances, the trial court very properly withheld relief against the Defendant Morgan for the reason that it would have been inequitable and unjust and that it was definitely contrary to the public policy of Oklahoma to permit the requested enforcement of the local foreign California statute under the very narrow confines urged by the Plaintiffs for their own benefit, and that it was proper, as a matter of the law of comity, to withhold judgment; and that such application of the law of comity is in no way in conflict with the full faith and credit clause of the Constitution. We submit that the Plaintiffs have not shown any reason for granting a Writ of Certiorari. The Respondent respectfully requests that the Writ of Certiorari be denied.

Respectfully submitted,

GEO. L. VERITY
2220 First National Building
Oklahoma City, Oklahoma
Attorney for Respondent

Of Counsel:

BROWN, VERITY & BROWN

December, 1967

APPENDIX

ITEM 1: Excerpt from testimony of Plaintiff, Dr. Ernest Gaillard, Jr., R. 165 and 166:

Q. And do you recall how much money you paid for
13] that interest? A. Thirty-five thousand.

Q. In December? A. Yes.

Q. Did you acquire any more? A. Yes, there was a similar interest that was acquired, I believe it was later in December, and we paid thirty-six five for it.

Q. Now, what was the occasion of your acquiring this later interest? A. Mr. Morgan said that Mr. Smith, who owned a portion of the James lease, was seriously ill here in Oklahoma City, or seriously ill anyhow, with a kidney condition.

And, as I recall, it was a cancer of the kidney. And he needed the money for medical expenses and things of that sort. Then later in the month, he said he was able to acquire his wife's interest in the James lease, as well.

Q. And so you bought that also, did you? A. Yes.

Q. Did you see Mr. Morgan between those dates? A. No, I don't believe so.

Q. Was anything said with regard to his relationship the transaction? A. Mr. Morgan purchased the interest for us. He told us that he had a similar interest in the
14] East Pason field, and that he would keep his eye on it for us.

Q. Was anything said with regard to the California corporation securities laws or notification? A. No, sir.

Q. Nothing at all? A. No, sir.

Q. Do you know how much money the James lease, or East Pason unit, has returned to you and Mrs. Gaillard, to date? A. No, I do not.

[APPENDIX]

Q. Do you have figures that would reflect this information? A. I have figures as of last year's in. I don't have the figures compiled for—I mean, for 1963, not 1964.

Q. You have the figures through 1963? A. Yes, sir.

Q. How much is that, have you calculated this on a sheet? A. This sheet was shown to me yesterday by Mr. Irvine, who obtained it from the auditors, Bonney, Camp, Keeling & Smith. Mr. Smith prepared it.

I have not verified these figures from my records but this shows total receipts of seventy-five thousand, eight hundred and sixty-one dollars and seventy-four cents, from the Smith interest.

15] Q. Could I see the sheet, please? A. Yes.

Mr. Irvine: Surely.

(Thereupon, an off the record discussion was held.)

Q. (Mr. Verity) Dr. Gaillard, I realize that you are not familiar with this, but I notice columns three and four are both James lease, one says, "NTS" and the other "ACS." A. They represent the two interests that I secured.

Q. That you obtained at two different times? A. Yes.

Q. Then, if I read this rightly, from the James lease NTS, the accumulation as of the end of 1963, was seventy-five thousand eight hundred and sixty-one dollars and seventy-four cents. A. Yes.

Q. And on the James lease ACS, the accumulation at the end of 1963, was seventy-five thousand two hundred and forty-four dollars and four cents. A. Right.

Q. As far as you know, this is correct? A. Yes.

ITEM 2: Letter Agreement between Plaintiffs and Fred Morgan, R. 149, Introduced in Pre-trial as a Joint Exhibit, R. 66

Joint Exhibit 1

Fred Morgan
Liberty Bank Building
Oklahoma City, Oklahoma

June 22, 1960

Dr. Ernest Gaillard, Jr., 6303 La Jolla Scenic Drive, La Jolla, California.

Dear Bill: In line with our recent conference relative to the drilling of the No. 1 Throckmorton in the NW/4 of Section 6-18N-7W, Kingfisher County, Oklahoma, which is subject to a 1/6th of 7/8ths Overriding Royalty, I agree to drill this well to a total depth not to exceed 7,500', to turn-key all cost to the casing point and assign you 1/8th interest in the lease and well for the sum of $1.00 per foot or not to exceed $7,500.00, plus 1/8th of $1,500.00 expense paid to E. C. Harlin, Jr.

In the event of a dry hole, you are to receive 1/8th of the dry hole $30,000.00 payments contributed by the various Companies owning surrounding acreage which will equal 50¢ per foot refund to you.

In the event production is found, you are to pay your 1/8th (12 1/2%) of the necessary tangible equipment, completion cost, etc.

We have placed the SE/4 of Section 36-9N-8W, in line for bids which will be sold on or about August 1, 1960. If we are the successful bidder you have the right to buy a 1/8th (12 1/2%) interest in this lease which is a diagonal offset to our drill site 160 at actual cost.

If this meets with your approval, please note your acceptance on the line provided below and return one copy to us for our files:

Accepted:
Dr. Ernest Gaillard, Jr.

Yours very truly,
Fred Morgan

June 25, 1960.

ITEM 3: Finding No. 10 by the trial court:

10. That the Plaintiffs' Complaint is based solely on alleged violations of the California Securities Code by Fred Morgan and that there is no comparable substantive or statute law in the State of Oklahoma, but, to the contrary, the statute law of the State of Oklahoma, at 12 OSA Sec. 2(1), expressly provides that oil and gas transactions are not securities and that it is contrary to the public policy of the State of Oklahoma to regulate oil and gas transactions as securities.